

Exhibit 1

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INSINKERATOR LLC, a Delaware
limited liability company,
Plaintiff,

vs.

JONECA COMPANY LLC, a Delaware
limited liability company, and THE
JONECA CORPORATION, a
California corporation,
Defendants.

JONECA COMPANY LLC, a Delaware
limited liability company,
Counter-Claimant,

vs.

INSINKERATOR LLC, a Delaware
limited liability company,
Counter-Defendant.

Case No.: 8:24-cv-02600-JVS-ADS

Action Filed: November 27, 2024

**DEFENDANTS' SURREPLY TO
PLAINTIFF'S REPLY IN SUPPORT
OF MOTION TO ENFORCE
PRELIMINARY INJUNCTION**

REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL

Judge: Honorable James V. Selna

Date: October 20, 2025

Time: 1:30 p.m.

Place: Courtroom 10C

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1 **I. INTRODUCTION**

2 After failing to support its overreaching Motion to Enforce Preliminary
3 Injunction (“Motion), ECF No. 139, with convincing evidence, Plaintiff InSinkErator
4 LLC (“ISE”) submits 17 new exhibits and five additional declarations with its Reply
5 In Support of Motion to Enforce Preliminary Injunction, ECF No. 161 (“Reply”) that
6 are similarly lacking. Not only does ISE offer no reason why it could not have
7 provided these exhibits when it filed its original Motion, but, for the reasons
8 explained below, this untimely evidence is wholly insufficient to meet ISE’s burden
9 of proving by “clear and convincing” evidence any alleged violations of the Court’s
10 Order Regarding Motion for Preliminary Injunction (“Order”), ECF No. 71. *See FTC*
11 *v. Affordable Media*, 179 F.3d 1228, 1239 (9th Cir. 1999) (citation omitted). The
12 Court should deny ISE’s Motion.

13 **II. ARGUMENT**

14 As a threshold matter, the Court should not even consider the “evidence”
15 newly submitted on Reply, including photos from store visits and screenshots of
16 third-party websites. *See, e.g., Giles v. Sardie*, 191 F. Supp. 2d 1117, 1127 (C.D.
17 Cal. 2000) (“It is improper for a moving party to introduce new facts or different
18 legal arguments in the reply brief than those presented in the moving papers.”).

19 In any event, ISE’s new and improper evidence fails to rescue its Motion for
20 at least the following reasons. **First**, ISE’s new packaging evidence does nothing to
21 rehabilitate the deficient evidence it originally used to support its Motion. **Second**,
22 ISE’s new packaging evidence, like its packaging evidence before, is inadequate to
23 meet its burden by clear and convincing evidence, let alone to show that Joneca did
24 not substantially comply with the Order’s requirement to sticker packaging. **Third**,
25 ISE’s new price placard evidence is nothing more than the same placard
26 photographed across different stores as to which the Order does not apply. **Fourth**,
27 ISE’s supposed new examples of online product pages without the disclaimer are
28 merely unauthorized listings by unverified resellers. **Fifth**, Joneca’s statements

1 regarding retailers' website policies are based on the retailers' own guidance.
2 **Finally**, ISE's supposed "evidence" of implementing a disclaimer in search results
3 pages is neither substantiated nor workable.

4 **A. ISE Did Nothing To Rehabilitate Its Deficient Packaging Evidence**
5 **From Its Prior Submission.**

6 ISE offered *zero* valid evidence in support of its opening Motion. Among
7 other failures, ISE's previously submitted evidence was inadequate for Joneca to
8 evaluate, as ISE failed to show all sides of the purportedly unstickered packages. *See*
9 Opposition to Motion to Enforce Preliminary Injunction ("Opp."), ECF No. 155, at
10 9. The notion that ISE's photos were sufficient because they captured "the front of
11 the product packages as they would appear to a consumer walking the aisles of the
12 store," Reply at 7, is not credible. Indeed, packages frequently get turned around on
13 shelves by customers and store employees, and ISE's investigators may well have
14 gotten confused about whether they were looking at the front or back of the package.
15 Declaration of Jonathan Chavez In Support of Surreply to Motion to Enforce
16 ("Chavez Decl.") ¶ 2. Without looking at all four panels, there is no way to ensure
17 *any* of the packages ISE identified in its Motion lacked the disclaimer. *Id.*

18 Joneca rebutted ISE's original packaging evidence at length and in detail,
19 annotating ISE's photos to show packages properly bearing disclaimers, clearly
20 facing the wrong direction, and reflecting significant damage, among other issues.
21 *See* Declaration of Jonathan Chavez In Support of Opposition to Motion to Enforce
22 Preliminary Injunction ("Chavez Opp. Decl."), ECF No. 155-1, ¶¶ 15–25. ISE
23 simply glosses over these deficiencies in its Reply. *See generally* Reply. It does not,
24 for example, offer declarations from the investigators who conducted the store visits
25 submitted with ISE's original Motion indicating that they reviewed all sides of
26 packaging. Instead, ISE attempts to shift the burden, claiming that Joneca is asking
27 the Court to "assume that the stickers must be on one of the other three sides of the
28 product package," Reply at 7, when in fact it is ISE that is asking the Court to assume

1 that the stickers are *not*. ISE likewise had no response to Joneca’s significant
2 evidence from numerous store visits showing the vast majority of packages are, in
3 fact, labeled. *See generally id.*; *see also* Chavez Opp. Decl. ¶¶ 8–14; Declaration of
4 Justine Chang In Support of Opposition to Motion to Enforce Preliminary Injunction
5 (“Chang Opp. Decl.”), ECF No. 150-3, ¶¶ 3-8; Declaration of Angie McGinnis In
6 Support of Opposition to Motion to Enforce Preliminary Injunction (“McGinnis Opp.
7 Decl.”), ECF No. 150-4, ¶¶ 3-8; Declaration of Rebecca C. Mandel In Support of
8 Opposition to Motion to Enforce Preliminary Injunction (“Mandel Opp. Decl.”), ECF
9 No. 150-1, ¶¶ 12-14.

10 **B. ISE’s New Packaging Evidence Is Inadequate To Meet Its Burden.**

11 Recognizing these fatal flaws in its Motion, ISE submits an entirely new batch
12 of store visits in support of its Reply. This new evidence is not only untimely, it is
13 also completely inadequate to meet ISE’s burden. Rather than show a “systemic
14 problem with Joneca’s compliance,” Reply at 4, at most, ISE has demonstrated a
15 handful of unstickered packages. ISE submits photos of only six packages from all
16 four sides with its Reply. *See* Ex. A to Declaration of Adeline C. Schmidt (“Schmidt
17 Decl.”), ECF No. 161-2, at 6-9 (showing four panels of one ½ HP disposer and three
18 panels of one 1 HP disposer (with the front panel omitted entirely and back panel
19 photographed twice)); Ex. B to Schmidt Decl., ECF No. 161-3 (showing four panels
20 of one ½ HP disposer and three panels (not including the front panel) of one 1 HP
21 disposer); Ex. C to Schmidt Decl., ECF No. 161-4 at 1-4 (appearing to show four
22 panels of two disposers); Ex. A to Declaration of Rodney Polanco (“Polanco Decl.”),
23 ECF No. 161-16, at 8-11 (appearing to show four panels of one disposer); Ex. A to
24 Declaration of Joseph Grinstein (“Grinstein Decl.”), ECF No. 161-22, at 4 (appearing
25 to show four panels of one disposer). ISE’s declarants do not attest to checking
26 packages on all sides for the disclaimer despite Joneca prominently raising this issue
27 in its Opposition, nor do they consistently photograph all four sides of disposer
28 packages, apparently cherry-picking the disposers for which to show all four sides.

1 *See generally* Schmidt Decl.; Declaration of William J. Melsheimer (“Melsheimer
2 Decl.”), ECF No. 161-10; Polanco Decl.; Declaration of Joanna Stanley, ECF No.
3 161- 17; Grinstein Decl.

4 As before, ISE also omits any context for any of its store visits, including,
5 importantly, how many total units, labeled and unlabeled, were in stores. Consider
6 just one example: ISE claims that an “ESS employee” visited The Home Depot Store
7 #615 in Orange, California on September 26, 2025 and “identified Joneca garbage
8 disposals” without the disclaimer.¹ Schmidt Decl. ¶ 5. As evidence, ISE submits
9 photos of two ½ HP Glacier Bay disposers. *See* Ex. C to Schmidt Decl. The packages
10 are shown in isolation, as if they are the only two in the store. *Id.* Joneca also visited
11 this *exact same store* two weeks before ISE, on September 7, 2025. *See* Chavez Opp.
12 Decl. ¶ 9; Ex. 1 to Chavez Opp. Decl. At that time, there were 23 Glacier Bay waste
13 disposer units on shelves, of which 21 packages were labeled and 2 ½ horsepower
14 packages (apparently the same ones that ISE found a short time later) were
15 unlabeled.² Photos from Joneca’s visit are shown below. *See also* Ex. 1 to Chavez
16 Opp. Decl.



1 Joneca objects to Paragraphs 3, 4, 5, and 7 of the Declaration of Adeline C.
2 Schmidt on the grounds that these statements lack foundation and constitute hearsay.
3 Fed. R. Evid. §§ 602, 802. These paragraphs vaguely describe store visits and purport
4 to verify photos taken neither by Ms. Schmidt, nor even another ISE employee, but
5 rather by third parties at “ESS.” Schmidt Decl. ¶ 2. The photos are not business
6 records of ISE and there is no hearsay exception that applies to render the materials
7 admissible.

8 ² Although Mr. Chavez brought the two unlabeled units to The Home Depot’s
9 customer service desk to be processed for return to vendor, it appears these units were
10 placed back on store shelves. Chavez Decl. ¶ 3. Joneca will follow-up with this
11 store again. *Id.*

1 This context clearly demonstrates Joneca's efforts at labeling and that the two
2 disposers found unlabeled are, in fact, outliers that escaped Joneca's labeling efforts
3 for one of the valid explanations that Joneca has offered.³

4 ISE also submits numerous exhibits regarding store visits where it complains
5 about (and provides photographs of) price placards, but *not* packaging – suggesting
6 that ISE encountered full-stickered inventory at those stores (or else it would have
7 claimed that it found deficient packaging). *See* Ex. A to Stanley Decl. (Spring,
8 Texas); Ex. C to Stanley Decl. (Tomball, Texas); Ex. A to Schmidt Decl. at 11-13
9 (Carlisle, Pennsylvania); Ex. D to Schmidt Decl. (Nashville, Tennessee); Ex. E to
10 Schmidt Decl. (Shorewood, Illinois); Ex. F to Schmidt Decl. (Victor, New York);
11 Ex. G to Schmidt Decl. (Mukwonago, Wisconsin); Ex. H to Schmidt Decl. at 1-3
12 (Bellevue, Wisconsin), 4-6 (Bellevue, Wisconsin); Ex. A to Melsheimer Decl. at 2-4
13 (Dallas, Texas); Ex. A to Melsheimer Decl. 4-7 (Dallas, Texas). By presenting a few
14 packages in isolation and refusing to disclose the total number of packages on
15 shelves, and by stuffing its Reply with photos of *price placards* (addressed *infra*)
16 rather than *packages* to give the illusion of additional “evidence,” ISE seeks to hide
17 what is obvious: the overwhelming majority of Joneca's packages on shelves are
18 labeled with the disclaimer.

19 Fundamentally, evidence of half-a-dozen unstickered packages compared to
20 the evidence of [REDACTED] (and counting) packages that Joneca has relabeled is wholly
21 inadequate to support ISE's Motion, let alone its draconian request that Joneca or its
22 contractor “return” to thousands of retail stores for a *second* time to “ensure”
23 packages are stickered. Reply at 8; *see* Opp. at 6. And contrary to ISE's unfounded
24 belief, neither Joneca (a 29-person company based in California) nor its contractor
25

26 ³ As explained in detail in Joneca's Opposition, any *de minimis* amount of
27 packages that slipped through the cracks despite Joneca's extensive efforts is likely
28 for one of the following reasons for which Joneca cannot reasonably correct: older
(non-stickered) inventory was returned by a customer, inventory was delayed in
transit and escaped the stickering effort, or inventory was not made available to
Joneca's contractor for some other reason.

1 (retained at the expense of over [REDACTED]) can “easily return to the stores periodically
2 to check if the product packages are stickered.” Reply at 8. Such an onerous and
3 exorbitantly costly effort would be wholly unwarranted considering ISE’s meager
4 evidentiary showing and Joneca’s extensive evidence of compliance.

5 **C. ISE’s New Price Placard Evidence Is Nothing More Than The Same**
6 **Placard Photographed Across Different Stores.**

7 After filing its deficient Motion, ISE went out to at least 18 stores searching
8 for legitimate examples of unstickered packages. *See* Exs. A-H to Schmidt Decl.;
9 Ex. A to Melsheimer Decl.; Ex. A to Polanco Decl.; Ex. A to Grinstein Decl.; Ex. A-
10 C to Stanley Decl. Unable to come up with more than a handful of examples of
11 packages lacking stickers, ISE now submits photos of the same price placard over
12 and over again, claiming noncompliance. *See, e.g.*, Exs. D, E, F, G, H to Schmidt
13 Decl.; Ex. A to Melsheimer Decl.; Ex. A to Stanley Decl. However, Joneca does not
14 dispute that the price placards at Home Depot are not stickered—Joneca contests that
15 these materials should be stickered at all. For the reasons explained in Joneca’s
16 Opposition, the Order does not require that price placards, like those depicted, be
17 stickered. *See* Opp. at 13-15.⁴

18 **D. The New Examples ISE Purports To Identify Of Webpages Without**
19 **Disclaimers Are Unauthorized Listings Of Joneca-Made Disposers.**

20 ISE purports to identify two examples of Joneca-made disposers listed for sale
21 on Walmart’s website that do not include the disclaimer. *See* Reply at 12-13; *see*
22 *also* Melsheimer Decl. ¶ 3. These websites do not reflect Joneca’s sales of its
23 disposers through Walmart. Rather, both examples are from unauthorized sellers that
24 list Joneca’s *Costco*-exclusive private label disposers for resale on *Walmart’s*
25 website. Chavez Decl. ¶ 4. Indeed, one webpage clearly indicates the disposer as

26 _____
27 ⁴ Oddly, ISE appears to complain that some price placards at Lowe’s are in fact
28 stickered. *See* Reply at 11; *see also* Ex. B to Stanley Decl. at 2. That some stickers
were applied to *over*-sticker beyond the requirements of the Order does not constitute
“selective compliance,” *id.* at 12, or change Joneca’s reasonable interpretation of the
Order.

1 “Sold by CHEAPEES.” *See* Ex. B to Melsheimer Decl. at 5. As to the other, since
2 the Reply was filed, the listing has toggled from “Out of Stock,” to “Not Available”
3 to “Sold by FSR Discounts,” and back to “Not Available.” *See* Chavez Decl. ¶ 4.
4 These are not sales by Joneca customers and Joneca was not aware of these listings
5 prior to ISE’s complaint in its Reply. Promptly after receiving ISE’s Reply, Joneca
6 contacted the resellers and demanded they remove the unauthorized listings, per
7 Walmart’s policy, and also reported both sellers to Walmart. *Id.* Nonetheless, Joneca
8 cannot be expected to police, nor be held accountable for, all instances where an
9 unauthorized seller (or reseller) on a third-party website fails to include the
10 disclaimer. ISE has provided no evidence that any webpage over which Joneca exerts
11 any degree of control lacks a clear and conspicuous disclaimer.⁵

12 **E. Joneca’s Statements Regarding Retailers’ Website Policies Are Based**
13 **on Retailers’ Requirements.**

14 In an effort to support its unreasonable view of how disclaimers should be
15 presented on retailer websites, ISE resorts to accusing Joneca of “ma[king] up” a
16 “demonstrably false” restriction by retailers from including text on the main image
17 of the product. Reply at 14. ISE’s unfounded and baseless allegation is wrong.
18 Written guidance from The Home Depot, Amazon, and Lowe’s plainly states that
19 main product images may not permit text. *See* Ex. B to Chavez Decl. at 7 (Home
20 Depot policy stating, “Main product images should only feature the product

22 ⁵ During meet-and-confer efforts, Joneca’s counsel repeatedly asked ISE’s
23 counsel for any example of a website wholly lacking the disclaimer. *See, e.g.,* Ex. C
24 to Declaration of William J. Melsheimer In Support Of Motion to Enforce
25 Preliminary Injunction, ECF No. 139-31 at 4 (“If there is a specific website you have
26 identified that lacks a disclaimer, we would gladly investigate.”). ISE provided none
27 during the meet-and-confer process, or even in its opening Motion. ISE’s failure to
28 previously raise the examples now cited in its Reply is not just indicative of its failure
to meet and confer in good faith, *see* Opp. at 3-4, it is indicative of the frivolity of
ISE’s entire Motion. Had ISE properly raised these particular websites during either
one of the parties’ two meet-and-confers or in any of its communications, Joneca
would have identified that these webpages are unauthorized listings in a meet-and-
confer setting (complete with taking appropriate action to have them removed) rather
than explaining this fact in an unnecessary motions briefing.

1 Iconography, text, water marks or logos are not allowed within the primary image”);
2 Ex. C to Chavez Decl. at 2 (Amazon policy stating that main product images should
3 contain “[n]o text, logos, borders, color blocks, watermarks, or other graphics
4 covering the product or in the product background”); Ex. D to Chavez Decl. at 1
5 (Lowe’s policy stating that product images must “[s]howcase the product only (no
6 text, logos, or promotional graphics outside of the ‘Dimensions 18’ slot”)). The fact
7 that ISE dug up examples – newly on Reply and never in a meet-and-confer context,
8 despite Joneca’s numerous requests – of ISE and other companies displaying text on
9 their main product images means nothing. *See* Ex. C to Melsheimer Decl. at 8-10.
10 Joneca has no information about why or how these images exist or whether these
11 images were or were not authorized by Home Depot, and ISE offers none. Chavez
12 Decl. ¶ 10.

13 Similarly irrelevant is ISE’s example of an Amazon product webpage for
14 “Sabre Advanced Pepper Spray.” *See* Reply at 14; Melsheimer Decl. ¶ 5. ISE points
15 to a red-text notice at the top of the webpage informing consumers that Amazon
16 cannot ship pepper spray to their desired address “due to local laws or Amazon
17 policy” to argue that Joneca can unilaterally implement the Court’s disclaimer in the
18 exact same fashion. *See* Ex. D to Melsheimer Decl. ISE’s pepper spray “example”
19 is pure conjecture, not credible argument. ISE provides no evidence showing it is
20 technically feasible for Joneca to implement its required disclaimer in this location
21 on Amazon’s website, let alone a single example of a product webpage that has a
22 *product-specific disclaimer* displayed in this manner on Amazon or any other
23 retailers’ website. *See generally* Reply. This is unsurprising because, as Joneca has
24 explained in detail, it is not possible for Joneca to reengineer Amazon’s website to
25 include whatever disclaimer ISE desires. *See* Ex. 29, 31, 33, 35, 37 to Chavez Opp.
26 Decl; *see also* Chavez Decl. ¶ 11. ISE’s random selection of third-party materials
27 from vastly different contexts provides no legitimate evidence about the
28 technological feasibility of adding Joneca’s disclaimers wherever ISE wishes.

1 Joneca worked directly with its retailers through their respective approval
2 processes to make changes to product webpages in accordance with the retailers'
3 respective policies. Chavez Decl. ¶ 5. Joneca's approach to implementing the
4 disclaimer at the first feasible mention of horsepower appropriately accounted for
5 these retailers' verifiable restrictions on format, structure, and content. *See* Opp. at
6 15-18; *see also* Exs. 28-37 to Chavez Opp. Decl. (specifically delineating the
7 available fields on each retailer's website and the limitations associated with each
8 field as established by the retailer).

9 **F. ISE's Supposed "Example" Of Implementing The Disclaimer In**
10 **Search Results Pages Is Neither Substantiated Nor Workable.**

11 As Joneca set forth in its Opposition, the Order does not require search results
12 to display the disclaimer. *See* Opp. at 18-20. Nor should it. Search results are a far
13 step beyond Joneca's advertising and packaging, and online product pages. The
14 Order is directed to "advertising, marketing, promotional, or other commercial
15 materials." Order at 19. Search results pages are not advertising or the "equivalent
16 [of] displays online." Reply at 17. They present a potential purchaser with options
17 and direct the consumer to more information with a click.

18 Further, as Joneca has explained, as a practical reality, Joneca is not able to
19 incorporate the disclaimer into search results. Opp. at 19-20. Notwithstanding the
20 fact the length of the disclaimer would require Joneca to use a font so small it would
21 render the disclaimer totally illegible, most retailers – as policy – do not permit any
22 text on main product images. *See, e.g.,* Ex. B, C, D to Chavez Decl. Retailers use
23 the main images from product webpages to generate the thumbnail images that appear
24 in their search results pages. Chavez Decl. ¶ 12. And search results pages provide
25 little room for text, as ISE indeed concedes. *See* Mot. at 6.

26 ISE speculates that "surely" the disclaimer can be added and improperly
27 attempts to shift the burden by complaining that Joneca "has not proven otherwise."
28 Reply at 16. ISE's putative new evidence is irrelevant. For example, the places that

1 ISE speculates may provide space for text beneath the product image (e.g., text
2 entries noting grind stage, noise level, power cord, star rating, price, promotions,
3 installation information, and delivery and pick-up information) on a Lowe's search
4 results page are generated by *Lowe's*, not by Joneca.⁶ Chavez Decl. ¶ 12. Joneca's
5 understanding is that it is not able to "borrow" from this space to include the
6 disclaimer, as ISE suggests without evidence. *Id.* ISE's abstract brainstorming about
7 what it would like to see in search results is completely divorced from reality. To
8 date, ISE has been unable to identify a single concrete example of a disclaimer
9 appearing in the search results page of a third-party retailer website, despite Joneca's
10 multiple requests.⁷

11 ISE's impracticable and unsupported demand that Joneca include the
12 disclaimer in third-party search results pages is, at base, a request to hobble Joneca
13 from competing in the marketplace by removing Joneca's products from search
14 results altogether. The Court should reject ISE's naked attempt to broaden the scope
15 of the Order by forcing Joneca to remove its products from search results or remove
16 horsepower classifications from its search results.

17 III. CONCLUSION

18 For the foregoing reasons, Joneca respectfully requests that Plaintiff's Motion
19 to Enforce be denied.

24 ⁶ ISE refers to "Walmart's" search results page in its Reply, at 15, and in the
25 title of the corresponding exhibit, *see* Ex. B to Melsheimer Decl. at 9. According to
26 ISE's provided hyperlink, however, this is a Lowe's search results page. *See id.*

27 ⁷ Despite protestations to the contrary, ISE's counsel did not "g[i]ve a few
28 examples of how disclaimers could appear in search results." Reply at 16. Rather,
ISE's counsel orally brainstormed the same half-baked notions that ISE later offered
(and Joneca discredited) in its Motion papers to include the disclaimer "in the
thumbnail or in the text immediately below the product title." *Id.* ISE has never
offered a tangible example of these ideas being implemented in any context.

1 Dated: October 13, 2025

HOGAN LOVELLS US LLP

2
3 */s/ Trenton H. Norris*

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants Joneca Company, LLC and
The Joneca Corporation certifies that this brief contains 3,515 words, which complies
with the word limit of L.R. 11-6.1.

Dated: October 13, 2025

/s/ Trenton H. Norris

Trenton H. Norris